

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2453

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13

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA, :

-against-

Docket #74-2453

JAMES CARFORA, :

Defendant-Appellant.

-----X

APPENDIX TO APPELLANT'S BRIEF

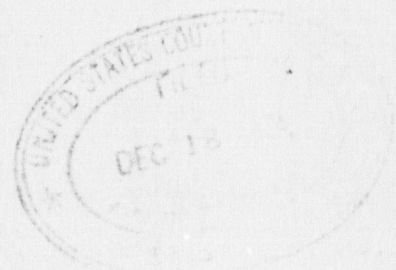
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H. ELLIOT WALES

ATTORNEY AT LAW

~~300 BROADWAY~~ 747 Third Avenue

NEW YORK CITY



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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA, :

Docket #74-2453

-against-

JAMES CARFORA,

:
Defendant-Appellant.
-----X

INDEX TO APPENDIX

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A - Docket entries

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10-23-14

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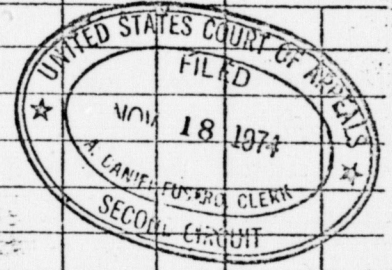
DOCKET

JUDGE WEINFELD

74 CRIM 755

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	T. Barry Kingham, AUSA.
JAMES CARFORA	264-6421
74-2453	
	For Defendant:
	H. Elliot Wales
	747 third Ave., NYC 10017

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(12)					
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Comm 18					
Witnesses 1503					
Obstruction of justice.					
(One Count)					



DATE	PROCEEDINGS
7-26-74	Filed indictment.
8-1-74	Deft. (att. present) Pleads not guilty. Motions returnable in 10 days. Bail continued as fixed by Mag. in the amount of \$5,000. cash or surety. Case assigned to Judge Weinfeld for all purposes. Stewart, J.
8-12-74	Filed deft's affidavit. and notice of motion for a bill of particulars ret. 8-27-74
8-12-74	Filed deft's affidavit. and notice of motion for dismissal - ret. 8-27-74
-- over --	

B

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PROCEEDINGS	CLERK'S FEES	
	PLAINTIFF	DEFENDANT
Filed deft's affdvt. and notice of motion for discovery & inspection ret. 8-27-74		
8-12-74 Filed deft's memorandum in support of motion to dismiss indictment.		
8-20-74 Filed Governments affdvt. in response to deft's motion for discovery, inspection and a bill of particulars.		
8-20-74 Filed Governments bill of particulars.		
8-15-74 Call Calendar adj. to 8-20-74 -- Weinfeld, J.		
8-22-74 Filed Governments affdvt. in connection with deft's motion to dismiss Governments memorandum of law in opposition to deft's motion to		
8-22-74 Filed memo endorsed on deft's motion to dismiss: Motion denied. So ordered. - Weinfeld, J. m/n		
8-19-74 Filed memo endorsed on deft's motion for a bill of particulars: Motio disposed of as consented by the Government. So ordered. - Weinf m/n		
8-19-74 Filed memo endorsed on deft's motion for discovery & inspection: Motio disposed of as consented to by the Government. So ordered. - We m/n		
8-29-74 Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum		
9-5-74 Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum		
9-13-74 Case called - Trial 10/3/74 at 10AM. Rm. 1306 WEINFELD, J.		
Sep. 23-74 Filed Govt. Amended Bill of Particulars.		
Sep. 30-74 Deft. Produced on writ - Trial to follow. Writ adjourned to 10/2/74 - Weinfeld,		
10-4-74 Trial begun before Weinfeld, J.		
10-7-74 Jury trial continued		
10-8-74 Trial continued and concluded Verdict - Deft. GUILTY. Pre-sentence investigation		

C

ES CARFORA

74 Cr. 755

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Continuation

PROCEEDINGS

Date of
Judgment

Filed JUDGMENT (atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR to run consecutively and to follow the sentence defendant is presently serving at United States Correctional Facility Lexington, Kentucky. Application for bail pending appeal denied. - WEINFELD, J. (copies issued)

-23-74 Filed Notice of Appeal from the judgment of conviction and sentence entered against him. (m/n) U.S. Atty; U.S. Marshal; Fed. Det. N.Y.

11-15-74 FILED MEMO ENCLOSED IN LETTER DTD 10-22-1974

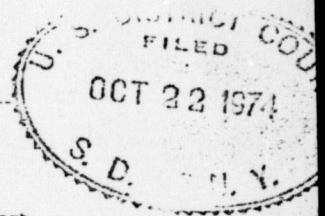
11-15-74 FILED TRANSCRIPT OF PROCEEDING DTD 10-30-74

RECEIVED
C. E. Thompson
CLERK
U.S. COURT

Judgment

1a

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK



United States of America

v.

JAMES CARFORA

No. 74 Cr. 755 (EW)

On this 22nd day of October, 1974, ~~xxx~~ came the attorney for the government and the defendant appeared in person and¹ by H. Elliot Wales, Esq., counsel. Defendant having been produced in Court on a writ of habeas corpus ad prosequendum

IT IS ADJUDGED that the defendant upon his plea of² not guilty and a verdict of guilty by a jury

has been convicted of the offense of corruptly and by threat of force, and by a threatening communication, endeavored to influence, obstruct and impede the due administration of justice. (Title 18, Section 1503 U.S. Code.)

as charged³
and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of⁴ ONE (1) YEAR to run CONSECUTIVELY to and to follow the sentence defendant is presently serving at United States Correctional Facility, Lexington, Kentucky.

Application for bail pending appeal denied.

~~Exhibit to Court Report~~

MICROFILM

OCT 24 1974

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Indictment - 2a

TBK:ew

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

Plaintiff, :

-v-

JAMES CARFORA, :

Defendant. :

-----x

INDICTMENT

74 Cr. 755

(EW)

The Grand Jury charges:

On or about the 20th day of July, 1974, in the Southern District of New York, the defendant, JAMES CARFORA, corruptly and by threat of force, and by a threatening communication, endeavored to influence, obstruct and impede the due administration of justice, by stating over the telephone to Shirah Neiman, an Assistant United States Attorney for the Southern District of New York, that she would be dead if anything happened to him on August 1, 1974, the date upon which he had been ordered to surrender for service of a sentence duly imposed by a Judge of the United States District Court.

(Title 18, United States Code, Section 1503.)

FOREMAN

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

INDICTMENT #74 CR. 755
(EW)

-against-

JAMES CARFORA,

Defendant.

: NOTICE OF MOTION FOR
DISMISSAL OF INDICTMENT -
RULE 12, FRCrP

-----X
S I R:

PLEASE TAKE NOTICE that upon the annexed affidavit of
H. ELLIOT WALES, and upon the indictment herein, the undersigned will
apply to this Court, before District Judge Edward Weinfeld, on the 27th day
of August, 1974, at 2:15 P. M., in Courtroom 905, pursuant to Rule 12 of the
Federal Rules of Criminal Procedure, as to the following relief:

1. Strike from the indictment the language "the date upon which he had been ordered to surrender for service of a sentence duly imposed by a Judge of the United States District Court";
2. Dismiss the indictment because of the failure to charge that the endeavor to obstruct the administration of justice was done in the context of any judicial proceeding then pending in the United States District Court for the Southern District of New York;
3. Dismiss the indictment on the ground that as of July 20, 1974, the date of the offense, there was no judicial proceedings then pending in the United States District Court for the Southern District of New York;
4. Dismiss the indictment on the ground that an assistant United States Attorney is not protected and covered by the language of 18 USC 1503 upon which this indictment was brought.

Dated: New York, N. Y.
August 7, 1974

Yours, etc.,

TO: CLERK OF THE COURT

UNITED STATES ATTORNEY

H. ELLIOT WALES
Counsel for Defendant
747 Third Avenue
New York, N. Y. 10017

1 GTPa J. Hobler-redirect 246

2 A No.

3 Q Would you commit a crime in this courtroom
4 to help him win this case?

5 A No.

6 MR. WALES: No further questions, your Honor.

7 THE COURT: You may step down.

8 (Witness excused.)

9 THE COURT: Please call your next witness.

10 MR. WALES: We have a legal matter to take
11 up with the Court. May we do so, your Honor? It may
12 take several minutes --

13 THE COURT: No, come up here now, please.

14 (At the bench.)

15 MR. WALES: I have in mind calling the
16 defendant. I would like to ask the Court for a ruling
17 with regard to what prior convictions can be
18 utilized for impeachment purposes.

19 I have reviewed the --

20 THE COURT: I only know of one prior
21 conviction. The jury knows about that also.

22 MR. WING: There are others.

23 MR. WALES: It is a question we have to go
24 over the record with, your Honor.

25

MR. WING: There is only one the government

1 GTPa

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2 would intend to use and that is an attempted grand
3 larceny in the State of New York in 1965.

4 MR. WALES: That is almost ten years old.

5 THE COURT: I will allow that one, no others,
6 though.

7 MR. WALES: I am going to ask your Honor
8 in view of the ruling of the Pucco case, in view of the
9 time element --

10 THE COURT: You have already said that,
11 haven't you?

12 MR. WALES: Yes.

13 THE COURT: I said I will allow the government
14 to inquire as to that one conviction.

15 What others?

16 MR. WING: The others are petty larceny. I
17 won't inquire.

18 This is an attempted grand larceny. I have
19 a certified copy if you want to look at it.

20 MR. WALES: Can I look at it to make sure that
21 it is a felony, not a misdemeanor?

22 MR. WING: It is a felony.

23 MR. WALES: May I see it?

24 MR. WING: I have no objection to showing
25 it.

GTpa

Carfora-cross

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MR. WALES : I have no further questions,
your Honor.

THE COURT: Start your cross examination.

CROSS EXAMINATION

BY MR. WING:

Q Mr. Carfora, you have a prior conviction
for attempted Grand Larceny, is that correct?

A Yes.

Q And you also have a conviction in the mail
fraud case which was tried by Miss Neiman, is that
correct?

A Yes.

Q What did you do the morning of Saturday,
July 20th?

A What time?

Q That morning.

A Well, I started the day off by going down-
stairs in the restaurant, having breakfast, like I
usually do.

Then I went to my shop on 29th Street and
I picked up some tools and I stayed there about an
hour, I read the mail, and from there I went to a
place called Jimmy's Meat Market on 7th Avenue, between
15th and 16th Street, and I fixed a door of his. A piece

Court's Instructions - 7a

1 GTpa

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2 MR. WALES: Your Honor, first of all, Miss
3 Neiman doesn't issue a mandate. When the mandate is
4 issued from the Court of Appeals it goes to the clerk
5 of the district court, which means that jurisdiction
6 has been returned to the district court. Now it is
7 up to the district court Judge to file --

8 THE COURT: I think it is overemphasizing
9 it and I am going to keep as I have it as I go along.
10 I am not going to take last minute requests,
11 whether it is from the government or anybody else. I
12 have been here since early this morning. All you had
13 to do was call up and tell me you wanted an
14 instruction along those lines. You knew it last night,
15 you knew it this morning. I do that with defendants,
16 too. I am not going to treat the government any
17 differently.

18 Next time you just get it in on time.

19 (In open court.)

20 THE COURT: Members of the jury: You are about
21 to enter upon your final function as jurors. You are to
22 discharge this duty in an attitude of complete fairness
23 and impartiality, and as was emphasized by me at the
24 time of your selection as jurors, without bias or
25 prejudice as to either the government or the defendant

1 GTPa

2 as parties to this litigation.

3 The fact that this trial was of comparatively
4 short duration in no way reflects its importance. It
5 is important to the government for the enforcement of the
6 criminal laws is a matter of prime concern to the
7 community. Equally, it is important to the defendant,
8 who is charged with the commission of a serious crime.

9 Let me add the fact that the prosecution is
10 brought in the name of the government, the United States
11 of America, entitles it to no greater consideration than
12 that accorded to any other party to a litigation. By
13 the same token, it is entitled to no less consideration.
14 All parties, whether government, corporations or
15 individuals, stand as equals at this bar of justice.

16 Your final function is to pass upon and
17 decide the fact issues. You, the members of the jury,
18 are the sole and exclusive judges of the fact. You
19 pass upon the weight of evidence, you determine the
20 credibility of witnesses, you resolve such differences
21 as there may be in testimony and you draw whatever
22 reasonable inferences may be warranted from the facts
23 as you determine it.

24 Later I shall discuss how you determine the
25 credibility of witnesses.

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1 GTpa
2 My function at this point is to instruct you
3 as to the law. It is your duty to accept these
4 instructions of law and to apply them to the facts as
5 you may determine them.

6 With respect to fact matters, it is your
7 recollection and yours alone that governs. Anything
8 that counsel for the government or the defendant may have
9 said with respect to disputed fact issues, whether made
10 during the progress of the trial, included in a question
11 or advanced in summation is not to be taken in place
12 of your own independent recollection of the facts. So,
13 too, if during the course of these instructions I should
14 make any reference to fact matters that does not accord
15 with your own recollection, you are to rely entirely
16 upon that recollection and reject anything I may
17 refer to. You are the exclusive and absolute judges
18 of the fact.

19 Before we turn to the specific charge
20 against the defendant, a number of preliminary
21 observations are in order.

22 There are certain principles of law which
23 apply in every criminal case and to which I made
24 reference at the time of your selection as jurors.

25 The indictment, returned by a Grand Jury,

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is simply a charge or an accusation. It has no probative value, that is, it is no proof of any kind to sustain the charge contained in the indictment.

The defendant has pleaded not guilty. Thus, the government has the burden of proving the charge against him beyond a reasonable doubt. The defendant does not have to prove his innocence. On the contrary, as I told you the other day, he is presumed to be innocent of the charge contained in the indictment. This presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, is in his favor as I now instruct you, and continues in his favor during the course of your deliberations in the jury room. It is removed only if and when you, the members of the jury, are satisfied that the government has sustained its burden of proof beyond a reasonable doubt.

The question that naturally comes up is, what is a reasonable doubt?

The words almost define themselves. That there is a doubt founded in reason and arising out of the evidence in the case, or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence.

1 GTpa
2 Reasonable doubt is a doubt which appeals to
3 your reason, your common sense, your experience and your
4 judgment. It is not caprice, whim or speculation. It is
5 not an excuse to avoid the performance of an unpleasant
6 duty. It is not sympathy for a defendant.

7 If after a fair and impartial consideration
8 of all the evidence you can candidly and honestly say that
9 you do not have an abiding conviction of the defendant's
10 guilt which amounts to a moral certainty, in sum, if
11 you have such a doubt as would cause you as prudent
12 persons to hesitate before acting in matters of
13 importance to yourself, then you have a reasonable
14 doubt, and in that circumstance it would be your duty
15 to acquit.

16 On the other hand, if, after such a fair and
17 impartial consideration of all the evidence, you can
18 candidly and honestly say that you do have an abiding
19 conviction of the defendant's guilt, such a conviction
20 as you would be willing to act upon in important matters
21 pertaining to the affairs of your own lives, then you
22 have no reasonable doubt and in that circumstance it
23 would be your duty to convict.

24 One final word on this subject. Proof
25 beyond a reasonable doubt does not mean proof to a

1 positive certainty or beyond all possible doubt. If
2 that were the rule few persons, however guilty they
3 might be, would be convicted. It is practically
4 impossible for a person to be absolutely and completely
5 convinced of any controverted fact which, by its
6 nature, is not susceptible of mathematical certainty.
7 In consequence, the law in a criminal case is that
8 it is sufficient if the guilt of a defendant is established
9 beyond a reasonable doubt, not beyond all possible
10 doubt.
11

12 Against this background of general law we
13 turn to the specific charge against the defendant.

14 The indictment charges that the defendant,
15 James Carfora, endeavored to obstruct the administration
16 of justice in violation of a law of the United States,
17 Section 1503 of Title 18, U.S. Code. That is the
18 criminal laws.

19 In broad and general terms, the obstruction
20 of justice statute is designed to protect the
21 integrity of the federal judicial process, and among
22 other matters to prevent improper interference with or
23 influence upon those engaged in the judicial process
24 including prosecuting attorneys. It seeks to ensure
25 that in the course of the administration of justice all

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2 persons involved therein, whether Judges, prosecutors, jurors,
3 marshals or witnesses, are free from any improper influence,
4 interference or impediment in the discharge of their respective
5 roles.

6 The statute in pertinent part reads: "Whoever
7 corruptly, or by threats ... or by a threatening ... communi-
8 cation ... endeavors to influence, obstruct, or impede, the
9 due administration of justice" is guilty of a crime.

10 Let us consider some of these terms used
11 in this law.

12 Due administration of justice refers to the
13 fair, impartial, uncorrupted and unimpeded consideration
14 of any case or matter, civil or criminal pending in the
15 courts of the United States. It includes every step or action
16 required in a pending case, and in a criminal case it extends
17 from the time an indictment is filed, through pretrial pro-
18 cedures, the trial itself, and all steps thereafter, including
19 the requirement that a defendant upon whom sentence has been
20 imposed surrender himself to the authorities to commence service
21 of that sentence.

22 To impede means any attempt to interfere with the
23 due administration of justice or with any step or
24 requirement in effectuating the due administration
25

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of justice.

The sweep of the law extends to any corrupt endeavor to interfere with the judicial process or its enforcement. The key word is, "Endeavor," which means any act, however contrived and whether or not successful, to influence, obstruct, impede or interfere with the due administration of justice.

The word corruptly as used in this statute simply means having an improper motive or purpose.

Success or failure of an alleged corrupt endeavor is not material. The communication referred to in the statute may be written or oral.

We now turn to the charge as set forth in the indictment.

It reads, "The Grand Jury charges that on or about the 20th day of July, 1974, in the Southern District of New York --" and I instruct you that the Borough of Manhattan, West 14th Street and the upper west side are included within the southern district -- "the defendant James Carfora corruptly and by threat of force and by a threatening communication endeavored to influence, obstruct and impede the due administration of justice by stating over the telephone to Shirah Neiman, an Assistant U.S. Attorney for the Southern

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District of New York, that she would be dead if anything happened to him on August 1, 1974," the date upon which he had been ordered to surrender for service of a sentence duly imposed by a Judge of the U.S. District Court.

In order to sustain the charge made against the defendant, the government must establish beyond a reasonable doubt the following essential elements.

One, that on July 20, 1974, a case was pending in this federal court entitled U.S. of America against James Carfora, the defendant, wherein a judgment of conviction had been entered pursuant to which the defendant had been ordered to surrender to commence service of his sentence on August 1, 1974, and that defendant knew that he was required to surrender.

I instruct you that a case wherein a defendant is required to surrender to the authorities to commence the service of a sentence imposed upon him by a U.S. District Judge is a proceeding pending in a court of the United States.

The evidence shows that such a proceeding was pending in the Southern District of New York on

GTPa

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1 July 20, 1974, wherein a judgment had been entered
2 pursuant to which James Carfora was required to surrender
3 to the authorities. It is undisputed that defendant knew
4 of the pending proceeding and that he was required to
5 surrender.
6

7 Two, that the defendant corruptly endeavored
8 to influence or obstruct or impede the due administration
9 of justice of the case.

10 Three, that the defendant sought to obstruct
11 the administration of justice by a threatening
12 communication made over the telephone to Shirah Neiman,
13 an Assistant U.S. Attorney for the Southern District
14 of New York, and in an endeavor to influence, or to
15 interfere with, or to impede James Carfora's surrender
16 to the authorities to commence service of his sentence
17 imposed upon him by a Judge of the U.S. District Court.

18 Precise words of threat need not be used.
19 The issue is whether the words allegedly used were
20 intended to intimidate, influence or impede in an
21 endeavor to obstruct the administration of justice.

22 In order to convict, you must find if
23 you do find such a telephone call was made, that by
24 his words and deeds the defendant specifically intended
25 and endeavored to influence or obstruct or impede the due

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administration of justice.

Even if you find that the defendant had the telephone conversation with Shirah Neiman on July 20, 1974 as charged but that he did not intend by that conversation to influence or obstruct or impede the due administration of justice, the defendant cannot be convicted.

On the other hand, if you do find that a threatening call was made, with the specific intent to obstruct the due administration of justice, and if you also find the other essential elements to which I have referred, then you have enough upon which to convict.

Moreover, it does not matter whether or not the person alleged to be the object of a threatening communication actually feels threatened or in physical danger.

The trial was of short duration and since counsel have just summed up, one last evening, one just this morning, and reviewed the evidence and urged upon you various factors in support of their respective positions, there is no occasion for the court to enter into an extended analysis of the evidence.

The government's case rests primarily upon the testimony of Shirah Neiman, the Assistant U.S. Attorney

1 who prosecuted the prior case against the defendant.
2 She testified, in substance, that during the course of
3 the various proceedings in that case, including
4 pretrial procedures, the trial itself and post-trial
5 activities, the defendant had talked with her over the
6 telephone on at least 18 occasions on the average of three
7 and a half to five minutes each, that in
8 addition she had heard the defendant speak in person on
9 at least 25 occasions, including the period of
10 the four-day trial when he personally participated
11 in the questioning of witnesses.
12

13 Miss Neiman further testified that on
14 July 12, 1974, the defendant was ordered by Judge Gurfein
15 to surrender to commence service of his sentence on
16 August 1st. That thereafter, on a Saturday evening,
17 July 20th of this year, at 7:45, while at her home, she
18 received a telephone call in which the speaker said,
19 "If anything happens to Carfora on August 1st, you
20 are dead," and she further testified that she recognized
21 the voice as that of the defendant and was absolutely
22 positive that it was he.

23 The defendant denies he made the
24 telephone call in any way threatened Miss Neiman.
25 He has offered, in addition to his own testimony, that

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of his landlord, Peter Choras and Tibor and Joseph Hobler, sons of the superintendent of the apartment house in which the defendant lives.

The defendant and the witnesses called by him testified they all had dinner together on the evening of July 20th at the defendant's apartment. Mr. Choras testified that he arrived at the defendant's apartment about a quarter to seven and left after dinner at about five or ten minutes after 8:00. The Hobler witnesses testified they arrived at the apartment at 7:00 and that Mr. Choras was there. Both Hobler boys testified that after dinner they left at 8:00 or shortly thereafter and that Choras remained in the apartment. All three witnesses testified that at no time did they see or hear the defendant make any telephone call.

The government challenges the testimony of each of these witnesses. It asserts that the testimony of each has inherent inconsistencies and contradictions and that it also conflicts with the testimony of other witnesses.

The government called as their rebuttal witness Postal Inspector Slavinski, who testified that these witnesses made prior statements to him which the

GTpa

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government contends are inconsistent with their trial testimony.

The government also called as rebuttal witness George Bacon and Frank Lopez, who testified that contrary to Tibor Hobler's statement there was no soccer game scheduled for the afternoon of July 20th. In addition, Frank Lopez testified that Tibor Hobler admitted to him that he, Tibor Hobler, had lied to an investigating officer about having a soccer game that day.

The government also called three witnesses to dispute the Hobler boys' testimony that they attended a wedding reception the night of the 20th.

Tibor Hobler, recalled as a witness, denied ever having made a statement that he had lied to an investigator and he insisted that he and his brother did go to the wedding reception that night.

Finally, the government called a representative of the T.V. station W.P.I.X., who testified that the program Mod Squad was not shown on Saturday night, July 20th, contrary to the testimony of the defendant and the Hobler boys.

Obviously there are conflicts in the

GTPa

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1 testimony before you. Indeed, the testimony on basic
2 issues is so irreconcilable it is fair to say that
3 this is not the result of lack of memory. Thus, there
4 are issues you are called upon to decide.
5

6 How do you determine where the truth lies?
7 What is the fact, the basic fact? Did the defendant make
8 the phone call on July 20, 1974 as charged in the indictment
9

10 In your search for the truth you are to be
11 guided by your plain everyday common sense. I frequently
12 say to jurors when you enter the door of this
13 courtroom and you sit in the jury box listening to
14 witnesses testify and when you deliberate in the jury room
15 you are not supposed to leave your common sense outside
16 the door of the courtroom. You are all persons of
17 experience drawn from different walks of life. You
18 determine the fact issue involving the credibility of
19 persons in the same way that you would determine that
20 kind of a question if you were called upon to
21 act in an important matter where you're personally involved.

22 You have seen the witnesses on the stand
23 and have observed their manner of giving testimony. I
24 think I mentioned to you at the very start of the
25 trial when I was discussing the procedures attendant
upon the trial and what your duties and functions are,

1 GTPa

2 that it was not only important for you to listen to what
3 the witness was saying, but also to observe the manner
4 of giving testimony, for frequently it is not so much what
5 a witness says but how he says it that may indicate to
6 you his credibility. This is simply referring to his
7 manner, whether his statements carry conviction to you.

8 How did the witness impress you? How did
9 his version of what occurred impress you?

10 The degree of credit to be given to a witness
11 should be determined by his demeanor, his appearance
12 on the stand, whether or not one is interested in the
13 outcome of the case, whether a witness has colored his
14 testimony, the reasonableness of a witness' statement.

15 Did the witness appear to be candid and
16 straightforward or did he try to hide some of the
17 facts?

18 The ultimate question for you to decide with
19 respect to a witness, after taking into account
20 inconsistencies, his demeanor, his conduct, is, did
21 the witness tell the truth on that witness stand before
22 you?

23 The law permits, but does not require, a
24 defendant to testify on his own behalf. Carfora has
25 taken the witness stand. Obviously as a defendant he

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has a deep personal interest in the result of this prosecution. In appraising his credibility you may take the circumstance of that interest into consideration. However, it by no means follows that simply because a person has a vital interest in the end result that he is not capable of telling a truthful, candid and straightforward story. It is for you to decide to what extent, if at all, his interest has affected or colored his testimony.

In your deliberation upon the charge against the defendant -- I believe I mentioned this at one point during the trial -- you are not to take into consideration the fact that the defendant was convicted and sentenced to imprisonment in the prior case. The evidence of that prior proceeding was admitted for the purpose of showing the context in which the alleged statement of July 20th was made.

In your deliberations as to whether the defendant violated the law on July 20, 1974, you are to consider only the evidence that pertains to that charge.

Miss Neiman's conduct in the earlier case is not at issue. She was engaged in the performance and in the discharge of her duties and whatever she did

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2 in furtherance of what she regarded as her proper duty
3 in the case is not before you. It was her duty to
4 represent the government in the various hearings
5 and motions therein. Evidence of her conduct in those
6 proceedings was allowed, as I told you during the trial,
7 solely for consideration of the defendant's claim that
8 Miss Neiman was motivated by hostility, prejudice
9 and bias against him and that, accordingly, she had a
10 motive to testify falsely against him.

11 The fact that the principal government witness
12 was an Assistant U.S. Attorney does not entitle her
13 testimony to any greater weight or consideration than
14 that afforded to any other witness in the case. This
15 applies to all government employees. You will
16 evaluate her credibility as well as the other
17 witnesses the same way as you do that of any other
18 witness who testified before you.

19 If you find that any witness -- and this
20 applies to government and defense witnesses -- wilfully
21 testified falsely as to any material fact, you have a
22 right to reject the testimony of that witness in totality
23 or accept only that portion which commends itself to your
24 belief or which you may find corroborated by other
25 evidence in the case.

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2 The government, to prevail, must prove the
3 essential elements by the required degree of proof
4 as already explained in these instructions. If it
5 succeeds, your verdict should be guilty. If it fails,
6 it must be not guilty.

7 To return a verdict it must be unanimous.

8 Your function is to weigh the evidence in
9 the case and to determine guilt or innocence solely
10 on the basis of such evidence and these instructions.

11 Under your oath as jurors, if the evidence
12 in the case warrants a conviction, the question of
13 sentence that may be imposed upon the defendant must
14 not enter into your deliberations in any respect. In
15 the event of a conviction, the sole responsibility for
16 imposing sentence rests with the court. Your duty
17 is to decide the case, as I have said, upon the law
18 and the evidence.

19 Each juror is entitled to his or her own
20 opinion. Each, however, should exchange views with
21 fellow jurors. That is the very purpose of
22 jury deliberation, to discuss and consider the evidence,
23 to listen to the arguments of fellow jurors, to
24 present your individual views and consult with one another
25 and to reach an agreement based upon the evidence.

If you should have a point of view that differs from that of fellow jurors and after listening to discussion and argument you are persuaded that the original point of view held by you should yield in the light of the evidence and the law, there is no reason why you should not change an opinion previously held. However, your final vote must reflect your own conscientious judgment as to how the case should be decided upon the law and the evidence.

I think you might wait in the jury box. If the lawyers want to come up, I will hear you.

(In the robing room.)

THE COURT: You may state your exceptions, Mr. Wales.

MR. WALES: Your Honor, I except to that portion of your Honor's charge in which you stated that a prosecuting attorney is entitled to protection under this particular section and I do state that a prosecuting attorney is not so covered by this particular statute.

I except to that portion of your Honor's charge in which you instructed the jury that the due administration of justice includes every step of the proceeding up to and including the surrender date, and I do state conversely, your Honor, that the surrender is

1 not an aspect of the proceeding, it does not fall
2 within the coverage and the language of the particular
3 section of the statute involved.
4

5 In line with that, I except to your Honor's
6 statement in which you instructed the jury that a case
7 in which a defendant is to surrender is a pending
8 proceeding, and I submit, your Honor, that the surrender
9 is not part of a pending proceeding.

10 MR. WING: Your Honor, I have one request,
11 and that is there was no instruction concerning his
12 prior conviction for the attempted grand larceny.

13 THE COURT: I noticed it was omitted,
14 but I don't see any point in going back on it. They
15 have a right to pass on --

16 MR. WING: I think both that conviction and
17 the mail fraud conviction.

18 MR. WALES: I think to do it now is to highlight
19 it.

20 THE COURT: He is right. Mr. Wales, don't
21 press it, because if you do, this is again in line with
22 what I have said during the trial, he is absolutely right.
23 I notice I omitted it in the charge. There would be
24 nothing unfair to my doing it upon his request since
25 it was inadvertently omitted, but I am not going to do it

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because -- never mind because. Either there is enough there or there isn't enough there now.

THE COURT: Swear the marshals.

(Two marshals were duly sworn.)

THE COURT: All right, members of the jury, you can go with the marshals.

Go in the jury room.

(At 10:45 P.M., the jury retired to the jury room to deliberate upon a verdict.)

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(At 12:55 P.M., in open court, jury present.)

THE COURT: I have a note from the jury in which they request a certain number of items.

First, they ask for a diagram of Carfora's room.

Am I correct that that was not offered in evidence as an exhibit, it was only marked for identification?

MR. WING: That's correct, your Honor.

THE COURT: It is not in evidence and I can't submit it to you.

Two, the letter discussed by defense attorney before Carfora was to go to jail, that is Defendant's Exhibit D.

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pretrial procedures, the trial itself and all steps thereafter, including the requirement that a defendant, upon whom sentence has been imposed, surrender himself to the authorities to commence service of that sentence.

To impede means any attempt to interfere with the due administration of justice or with any step or requirement in effectuating the due administration of justice. The sweep of the statute extends to any corrupt endeavor to interfere with the judicial process or its endorsement.

The key word is endeavor, which means any effort or any act, however contrived and whether or not successful, to influence, obstruct, impede or interfere with the due administration of justice.

The word corruptly as used in this statute simply means having an improper motive or purpose.

Does that answer your question?

All right, you may resume your deliberations.

Do the jurors want the exhibit you sent out?

You don't need it. All right.

(At 4:15, the jury returned to the jury room to continue to deliberate upon a verdict.)

(Court Exhibit 2 marked for identification.)

(At 5:15 P.M., a note was received from

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the jury.)

(In open court; jury present.)

THE FOREMAN: Can I talk?

THE COURT: It all depends.

THE FOREMAN: That is what I want to ask.

THE COURT: I have a note. Is there anything
you want to add to the note?

THE FOREMAN: I have the votes here. Is
that significant?

THE COURT: No, no, you hold that.

I have a note from the jury in which they
state or the members state that, "We have reached
an impasse."

It is desirable if a verdict can be
reached that this be done from the viewpoint of the
defendant and the government.

It is normal for jurors, upon initial
consideration of matters, to have differences. This is
quite common.

Also as I mentioned in my main charge,
frequently jurors, after extended discussion, may find
that a point of view which originally reflected a fair
and considered judgment might well yield upon the
basis of argument and reconsideration of the facts and

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the evidence.

I have no right to and do not inquire as to how you stand, but I do want to make a reference to a viewpoint expressed by the Supreme Court many years ago, and I'm quoting it:

"That although the verdict must be the verdict of each individual juror and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen with a disposition to be convinced, to each other's arguments; that if the much larger number were for conviction a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the mind of so many men"-- this was written before the days of the women's lib movement, I suppose it would be men and women now -- "that if the much larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men equally honest, equally intelligent with himself. If upon the other hand the majority was for acquittal, the minority ought to ask

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2 themselves whether they might not reasonably doubt the
3 correctness of a judgment which was not concurred in
4 by the majority."

5 I emphasize that no juror must vote for
6 any verdict unless after full discussion, consideration
7 of the issues and exchange of views it does represent
8 his or her considered judgment.

9 My own judgment is, based upon the testimony
10 that was developed during this trial, that further
11 consideration is warranted by the jurors and I am going
12 to ask you to return for further deliberations.

13 MR. WALES: Your Honor, may we approach
14 the bench first, please?

15 THE COURT: Yes.

16 (At the bench.)

17 MR. WALES: While your Honor has
18 instructed the jury that the minority should listen to
19 the majority, I am going to ask your Honor to also
20 instruct the jury that the majority should listen to the
21 minority in its deliberations.

22 THE COURT: I am not going to alter the
23 instruction.

24 MR. WALES: I except as your Honor gave it.

25 (In open court.)

1 THE COURT: All right, you may resume your
2 deliberations.
3

4 (At 5:35 P.M., the jury returned to the
5 jury room to continue to deliberate upon a verdict.)

6 (Court Exhibit 3 marked for identification.)

7 * * *

8 (At 10:55 P.M., in open court, jury present.)

9 THE COURT: First, members of the jury, let
10 me say this to you. The hour is late and the court has
11 always recognized the problem of transportation at this
12 hour of the night and I have made arrangements for each
13 of you to be taken home by limousine so you don't have
14 any problems with how you are to get home. The cars are
15 here ready and you will be taken home to your respective
16 residents so you might be relieved about getting home.
17 When we conclude our business, the marshals will see
18 you to the cars.

19 All right, Mr. Clerk.

20 (Jury roll call; all present.)

21 THE CLERK: Mr. Foreman, have you agreed
22 upon a verdict ?

23 THE FOREMAN: Yes, we have.

24 THE CLERK: How do you find the defendant,
25 guilty or not guilty?